



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BJG  
Docket No: 91-00  
12 June 2000

NO [REDACTED] USN  
[REDACTED]  
[REDACTED]

Dear Petitioner [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 24 April 2000, a copy of which is attached. They also considered your rebuttal letter dated 19 May 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. They were unable to find any error or injustice in the composition of your enlisted ranking board, noting that the applicable directive, Bureau of Naval Personnel Instruction (BUPERSINST) 1610.10, provides no guidance concerning such boards. They were not persuaded that the Army member was biased against you because you had filed a grievance against him. Further, they noted your assertion that your reporting senior (RS) told you, on 7 December 1999, that "she did not use the recommendations of the board at all."

The Board found that you suffered no harm from the delay in your mid-term counseling. In this regard, they noted that you assert that this counseling did not bring up any deficiencies, so they found that you were not denied a chance to take corrective action sooner.

Finally, the Board found the increase in your individual trait average from your preceding evaluation was not inconsistent with the drop in your promotion recommendation from "Must

Promote" (second highest) to "Promotable" (third highest). They observed that BUPERSINST 1610.10 limited your RS to marking only one petty officer first class "Early Promote" (the highest), and only one "Must Promote".

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

91-00

1610  
PERS-311  
24 April 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests his promotion recommendation be changed on his performance evaluation for the period 16 November 1998 to 15 November 1999 from "Promotable to Must Promote".

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the performance evaluation in question to be on file. It is signed by the member acknowledging the contents of the report and his right to make a statement. The member did not indicate whether he desired or did not desire to submit a statement. The member did submit a statement and it was endorsed by the reporting senior and is properly reflected next to the report in question.

b. The member alleges there was a series of unjust dealings within his command and believes improprieties occurred during the promotion recommendation decision making process. Evaluation of a member's performance and making recommendations concerning promotion and assignment is the responsibility of the reporting senior. In reviewing petitions that question the exercise of the evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. We must determine if there is any rational basis to support the reporting senior's decision, and whether the reporting senior's actions were the result of improper motives. Therefore, for us to recommend relief, the petitioner has to demonstrate that the reporting senior did not properly exercise his/her authority and the petitioner must show that there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion, he must provide reasonable evidence to support the claim. I do not believe Petty Officer Feldman has done so. The member has provided nothing other than his own assertion.

c. The reporting senior is the judge of the performance of subordinates. While the member may disagree with the reporting senior's evaluation, it all comes down to the requirement that the

reporting senior must make a judgment and rank the member's. While the reporting senior assigned the member a promotion recommendation of "Promotable", such a ranking does not indicate a failing on the member's part, but rather that the reporting senior gave greater value to the contribution of the "Early Promote and Must Promote" to the other member's in the summary group.


d. While reference (a) does not address specific ways to determine in what manner members are ranked, the reporting senior establishes how ranking boards are formed.

e. A fitness report does not have to be consistent with previous or subsequent reports. Each performance evaluation represents the judgment of the reporting senior during a particular reporting period.

f. We cannot administratively make the requested change to the promotion block on a performance evaluation. Only the reporting senior who signed the original report may submit supplementary material for file in the member's record.

g. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

  
Head, Performance  
Evaluation Branch